



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-400
<b>Regulation title</b>	Rules and Regulations for the Enforcement of the Virginia Fertilizer Law
<b>Action title</b>	Amends 2 VAC 5-400 based on recommendations by the Attorney General's Government and Regulatory Reform Task Force
<b>Date this document prepared</b>	January 18, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The Office of the Attorney General's Regulatory Reform Task Force recommended that a preamble be added to the regulation as required by statute. Section 3.1-106.4 B of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to promulgate regulations and directs that the regulation shall contain a preamble stating: "The Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation." This amendment adds that preamble by adding section 2 VAC 5-400-5 to the regulation.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On December 6, 2007, the Board of Agriculture and Consumer Services approved the proposed amendments to 2 VAC 5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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Section 3.1-106.4 of the Code of Virginia gives the Board of Agriculture and Consumer Services authority to promulgate this regulation.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The addition of section 2 VAC 5-400-5 to regulation 2 VAC 5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law is necessary to meet the requirement specified in Section 3.1-106.4 B of the Virginia Fertilizer Law.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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The proposed amendment to 2 VAC 5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law is considered non-controversial and is required by statute.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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The proposed amendment to 2 VAC 5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law authorizes the Board of Agriculture and Consumer Services to receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of regulation promulgated under the Virginia Fertilizer Law.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

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There are no disadvantages to the public or regulated community.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no requirements within the proposed amendment that exceed minimum applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no particular localities that will be affected by the proposed amendments.

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum:*

- 1) the establishment of less stringent compliance or reporting requirements;*
- 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements;*
- 3) the consolidation or simplification of compliance or reporting requirements;*
- 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and*
- 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There are no flexibility or alternative regulatory methods to meet this statutory requirement. The amendment poses no adverse impact on small businesses.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	No anticipated cost to the state to implement the proposed amendment.
<b>Projected cost of the regulation on localities</b>	No anticipated cost to localities to implement the proposed amendment.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	No individuals, businesses or other entities are anticipated to be affected by the proposed amendment.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	No entities are anticipated to be affected by the implementation of this proposed amendment.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	No additional costs are anticipated to be incurred by the implementation of this regulation.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no alternative methods to meet this statutory requirement.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage*

*economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The proposed regulatory action will not impact the institution of the family or family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
None	2 VAC 5-400-5	None	<p>"Authorizes the Board of Agriculture and Consumer Services to receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of regulation adopted by the Commissioner under the Virginia Fertilizer Law."</p> <p>Section 3.1-106.4 B of the Virginia Fertilizer Law specifies that this provision be included in the regulation.</p>